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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,115	07/02/2003	Daniel Lee Holt	12929.1105US01	3914
23552	7590	05/31/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			BARROW, JAMES G	
			ART UNIT	PAPER NUMBER
			3749	

DATE MAILED: 05/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,115

Applicant(s)

HOLT ET AL.

Examiner

James G. Barrow

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6-12 and 15-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,6,11,12,15,18,20-24,26 and 27 is/are rejected.
- 7) ☒ Claim(s) 25,28 and 29 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>10/27/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "275" has been used to designate both "notches (or slits) 275" (P: 8, L: 29) and "seats 275" (P: 9, L: 21). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to because In figure 17 there should be an indicator line and reference character 550 as set forth in line 21 of page 13 which states "Figure 17, the flue connection member 550". Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

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be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "a seating member" (C: 15, L: 2) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an

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application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

The disclosure is objected to because of the following informalities:

- In line 9 of page 3, "flue plate" should be --flue connection system--.
- In line 10 of page 3, "flue plate" should be --flue connection system--.
- In line 13 of page 3, "system of" should be --system and flue plate of--.
- In line 16 of page 5, "servers" should be --serves--.
- In line 30 of page 10, "servers" should be --serves--.

Appropriate correction is required.

35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: The embodiments illustrated in figures 1-17 are not properly differentiated. The embodiments are referred to as "Figure 1, a side view of an example embodiment" (P: 5, L: 9-10), "another embodiment ... shown in Figure 5" (P: 8, L: 4-7), "another embodiment ... Referring now to Figure 11" (P: 10, L: 25-27), and "This embodiment ... Referring to Figure 15" (P: 12, L: 17-19). The

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Applicant should differentiate between the embodiments such as a first embodiment, second embodiment, third embodiment, and fourth embodiment.

Claim Objections

Claims 26 is objected to because of the following informalities:

- The term “vent system” (C: 26, L: 1 and 5) should be –flue duct--, because in the specification the term “vent system” is defined as “a vent system for venting exhaust gases from the combustion chamber to outside of the appliance” (P: 2, L: 13-14).
- The term “vent panel” (C: 26, L: 1-5) should be –vent system--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 6, 11, 15, 21, and 27 are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential elements, such omission amounting to a gap between the elements. See MPEP § 2172.01. The omitted elements are:

- A “first aperture” (C: 1, L: 4) and “an extending member” (C: 1, L: 4-5) are not structurally tied together until claim 2.
- A “seating member: (C: 6, L: 2) is not structurally tied to the “second aperture” (C: 1, L: 6).

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- An “aperture” (C: 11, L: 7) and “an extending member” (C: 11, L: 7-8) are not structurally tied together until claim 12.
- A “seating member” (C: 15, L: 2) is not structurally tied to “the vent opening” (C: 11, L: 11) to enable “the flue connection member is positioned in contact with the appliance, the portion of the extending member that extends beyond the bottom surface of the plate portion of the flue connection member extends into the seating member” (C: 15, L: 2-5) if “the flue connection member is further configured to be coupled to the appliance to substantially align the aperture of the flue connection member with the vent opening of the vent system” (C: 11, L: 10-12).
- An “aperture” (C: 20, L: 3) and “an extending member” (C: 20, L: 4) are not structurally tied together until claim 21.
- Regarding the method claim 27 that depends from method claim 26, if claim 26 recites the step “coupling the flue connection member to the appliance” (C: 26, L: 8) how can “the appliance further includes an appliance connection member defining a second aperture, the method further comprising aligning the second aperture with the vent aperture and the first aperture, and coupling the appliance connection member between the appliance and the flue connection member” (C: 27, L: 1-4).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11, 12, 15, 18, 20-24, and 26 are rejected under 35 U.S.C. 102(b) as being anticipated by Binzer (5,299,558). Binzer discloses a fireplace 2, a combustion chamber 6, a vent opening 36, a flue connection member 58 having a plate portion 62 that includes an aperture (see figure 5), and including a member that extends above and below the plate portion 62 with the top portion fluidly connected to flue duct 4 and the bottom member 66 to seat (see figure 4) connect to the aperture 36. Regarding claim 26 to a method of coupling a vent system to a fireplace, the apparatus illustrates the method.

Allowable Subject Matter

Claims 25, 28, and 29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 1 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hussong et al (6,029,655), Duong (5,50-, 641), and Cannata (4,683,623 and 4,584,986) disclose fireplaces with adaptors to connect the fireplace to a duct.

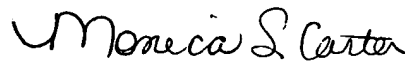
Contact Information

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James G. Barrow whose telephone number is (571) 272-4870. The examiner can normally be reached on M-F, 9:30 A.M.-6:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ira S. Lazarus can be reached on (571) 272-4877. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James Barrow


MONICA S. CARTER
PRIMARY EXAMINER